

1 A At the meeting, yes.

2 Q I want to direct your attention to page 12 of Mass
3 Media Exhibit 23, and just for your information if you would
4 just take a moment to review the fact that the agenda itself
5 appears to begin on page 10. You may refer back to that.
6 And it concludes on page 13.

7 (Witness reviews document.)

8 A Yes.

9 Q Do you recognize this document?

10 A I believe this is the agenda that was passed out.

11 Q On page 12 where the heading appears "Outside
12 Ownership," et cetera, do you see that there is a
13 handwritten note in the margin?

14 A To the left?

15 Q Yes, sir.

16 A Yes.

17 Q Do you recognize the handwriting?

18 A No.

19 Q With respect to the contents of the outside
20 ownership matter, the first -- you see the first sentence?

21 A Yes.

22 Q Was this information discussed at the meeting?

23 A Yes.

24 Q Now, I want you to read the second sentence to
25 yourself.

1 Have you read it?

2 A Yes.

3 Q Do you know what the basis is for the contention
4 in that sentence that this would be undertaken in connection
5 with the planned subsequent transfer to a third party?

6 A No, I don't.

7 Q Did you ever talk with Mr. Hicks as to how that
8 statement came to be?

9 A This statement?

10 Q Yes.

11 A Did I talk to Mr. Hicks?

12 No, I did not.

13 Q Did you ever speak with Mr. Sackley about it?

14 A No, I did not.

15 Q Did you ever speak --

16 A You mean how this statement got into the agenda?

17 Q Yes, sir.

18 A No.

19 Q Did you ever speak with anybody about it?

20 A No.

21 Q Do you know whether Mr. Hicks had given this
22 information to Mr. Sackley?

23 A I do not.

24 Q Do you know who prepared the agenda?

25 A Well, Mr. Sackley passed it out, so he may well

1 have -- this is an unusual agenda. He may well have
2 prepared it.

3 Q Well, do you have any knowledge that anybody else
4 was involved in the preparation of this document besides Mr.
5 Sackley?

6 A I don't have any knowledge of who prepared it.

7 Q I take it you read this second sentence in this
8 item at or about the time of the meeting?

9 A I think I read the entire agenda some time during
10 the meeting.

11 Q Was it ever discussed in the meeting whether there
12 was a planned subsequent transfer to a third party?

13 A I don't believe so.

14 Q Now, if you could just read to yourself the next
15 two sentences.

16 (Witness reviews document.)

17 BY MR. SHOOK:

18 Q You have, sir?

19 A I have.

20 Q Do you recall whether or not this was discussed at
21 the meeting, that being whether or not an opinion should be
22 obtained and when it should be obtained?

23 A I know it was not discussed at the meeting.

24 Q I want to refer you to the same exhibit, this time
25 page 17, and read to yourself under the heading "Hicks

1 Private Transaction," the second sentence.

2 A I've read it.

3 Q Is that sentence correct or is the information in
4 that sentence inaccurate or incorrect?

5 A This is the January 28th meeting.

6 Q Yes, sir.

7 A I do remember at that meeting the request for an
8 opinion.

9 Q The reason that I posed the question the way I did
10 is that the --

11 A So the trouble with the sentence is it says
12 "Reminded Dave of the previous instruction."

13 Q Right.

14 A So I remember the discussion that the board would
15 like an opinion. I don't remember any other discussion.

16 Q Would it be -- is it incorrect that the word
17 "reminded" is used?

18 MR. JOHNSON: Well -- I'm sorry.

19 BY MR. SHOOK:

20 Q Okay, the second sentence --

21 MR. JOHNSON: The word is used. Do you mean is
22 the use of the word incorrect?

23 MR. SHOOK: Yes, sir.

24 MR. JOHNSON: Sorry. Apologize.

25 THE WITNESS: You want to state that question.

1 MR. SHOOK: Okay. I'll phrase it differently.

2 BY MR. SHOOK:

3 Q The way I read this sentence where it says, "The
4 board reminded Dave of the previous instruction," et cetera,
5 makes it appear that at some point earlier he had been told
6 to furnish to Crystal Radio an opinion, et cetera.

7 My question to you is, is the import of that
8 sentence inaccurate in the sense that he hadn't been
9 reminded of anything because he hadn't been told to do
10 anything before?

11 A I don't know what was told to Dave and what wasn't
12 told to Dave.

13 Q And that would still be the case after reading the
14 information that appears on page 12 of Mass Media Exhibit 23
15 in terms of the information in the agenda about the opinion?

16 A What -- what's the question?

17 Q Okay. I'm referring you back to Mass Media
18 Exhibit 23, page 12. And the two sentences we have been
19 focusing on involving a legal opinion and when it was to be
20 obtained and what it was to be for.

21 And what I'm asking you does this refresh your
22 recollection in any way as to whether or not at the
23 September 28th board meeting Mr. Hicks was told to do
24 something?

25 A No. My specific memory is that that subject was

1 not discussed at the board meeting.

2 Q So, in other words, it appeared on the agenda but
3 it was just left there?

4 A Yes.

5 MR. SHOOK: Your Honor, if I haven't done so
6 already, I would like to off Mass Media Exhibit 21.

7 JUDGE CHACHKIN: Any objection?

8 MR. WERNER: No.

9 JUDGE CHACHKIN: Mass Media Bureau Exhibit No. 21
10 is received.

11 (The document referred to,
12 having been previously marked
13 for identification as MMB
14 Exhibit No. 21, was received
15 into evidence.)

16 BY MR. SHOOK:

17 Q Now, Mr. Brown, if I remember right, your
18 testimony was to the effect that a guarantee requested by
19 Booth came into the negotiating picture some time in October
20 of 1993?

21 A October or November.

22 Q Or November.

23 In other words, negotiations had -- there had been
24 an exchange of drafts prior to the time Booth wanted a
25 guarantee from the members of Hicks Broadcasting?

1 A That's the way I understand it.

2 Q When the request for the guarantee came in, did
3 you have any discussion with Mr. Hicks as to how he was
4 going to meet that obligation in the event he was called
5 upon to do so?

6 A Well, when that came up I clearly pointed it out
7 to Mr. Hicks because that's one of the concerns I had.

8 Q And his response was?

9 A Well, I don't recall specifically his response.
10 Obviously, it was a change in the deal.

11 JUDGE CHACHKIN: Well, did he give a response to
12 your question?

13 THE WITNESS: Well, the way I would bring these
14 things up, quite often I would circulate the documents, and
15 then ask for his comments, and this one, of course, I know I
16 discussed with him.

17 JUDGE CHACHKIN: And what did he say?

18 THE WITNESS: He must have agreed to it because --
19 at least in the final form because that's the way it is.

20 JUDGE CHACHKIN: And you said you raised concerns
21 you said with him how he was going to meet his guarantee.

22 THE WITNESS: No, not how he was going to meet it.
23 I raised concerns with him about the guarantee.

24 JUDGE CHACHKIN: Well, what was your concerns?

25 THE WITNESS: Well, that he is signing a document

1 which has him guarantee over \$127,000 personally on a note.

2 JUDGE CHACHKIN: And what did he say in response?

3 THE WITNESS: I don't remember. You know, are you

4 saying the first time we brought it up? I don't remember
5 his response.

6 JUDGE CHACHKIN: How many times did the subject
7 come up?

8 THE WITNESS: The subject of the guarantee?

9 JUDGE CHACHKIN: Yes.

10 THE WITNESS: It came up several times; a number
11 of times.

12 JUDGE CHACHKIN: Do you remember any of his
13 comments in response to your bringing up the subject at any
14 time?

15 THE WITNESS: Not specifically, no.

16 JUDGE CHACHKIN: Well, what do you remember
17 generally?

18 THE WITNESS: Well, I remember generally we were
19 concerned about the guarantee.

20 JUDGE CHACHKIN: Mr. Hicks was also concerned
21 about it?

22 THE WITNESS: Yes, he was.

23 JUDGE CHACHKIN: That's all you remember?

24 THE WITNESS: That's all I remember.

25 JUDGE CHACHKIN: Do you remember why he was

1 concerned?

2 THE WITNESS: Well, this was a change in the deal,
3 and it meant that -- sure. Sure, he was concerned because
4 it personally obligated him to a certain amount on the note
5 if the note were not paid.

6 BY MR. SHOOK:

7 Q At the September 28, 1993, board meeting of
8 Crystal, were you called upon to provide any information
9 about the possible acquisition of WRBR by an entity that Mr.
10 Hicks was going to be affiliated with?

11 A This was at the September meeting?

12 Q Yes.

13 A I don't recall whether I said anything about
14 the -- I doubt that I said anything about the entity to be
15 formed.

16 Q Did you say anything at all --

17 A Didn't know what the entity was at that time.

18 Q Understood.

19 Did you say anything at all about the proposed
20 deal?

21 A At the September meeting?

22 Q Yes, sir.

23 A I may have.

24 Q Do you have any recollection as to what it was
25 that you said?

1 A Well, I certainly disclosed that I was
2 representing Dave Hicks. Beyond that, I have no specific
3 memory of what I said. As I told you, I think it was a very
4 brief discussion.

5 Q Was there any discussion at that board meeting as
6 to how much time -- how much of Mr. Hicks' time might be
7 required in the event he went through with the deal?

8 A There may have been.

9 Q Do you recall at all what that might have been?

10 MR. WERNER: The question is ambiguous. Did there
11 come a time that --

12 MR. SHOOK: With specificity.

13 MR. WERNER: Do you recall at all what was said
14 about it or do you recall at all how much time Mr. Hicks was
15 going --

16 MR. SHOOK: No. The subject is the time, so the
17 question is what time was involved.

18 BY MR. SHOOK:

19 Q Was there anything specifically said?

20 A At that meeting about how much time?

21 Q Right.

22 A I think there may have been.

23 Q Okay. And along those lines do you have any
24 specific recollection as to what was said?

25 A No, I don't.

1 Q Do you have any recollection as to whether
2 anything was said at the September 28, 1993, board meeting
3 about possible financial exposure of Mr. Hicks with respect
4 to WRBR?

5 A My -- I don't believe anything was said about the
6 financial exposure of Mr. Hicks at the September 28 meeting.

7 JUDGE CHACHKIN: Do you have something to refresh
8 this witness's recollection on this?

9 MR. SHOOK: Well, Your Honor, with respect to the
10 September 28 meeting, I do not.

11 BY MR. SHOOK:

12 Q Mr. Brown, let's change that from the September 28
13 meeting to the January 1994 meeting, and in terms of what I
14 have for you to look at is -- it's only going to be --

15 A Could you give me the number?

16 Q Yes, sir. Mass Media Exhibit No. 23, page 17,
17 under the heading "Mr. Hicks Private Transaction."

18 My question is were you called upon at this board
19 meeting to give a description of the proposed deal?

20 A I don't remember my giving a description of the
21 proposed deal.

22 Q Do you recall whether or not Mr. Hicks gave a
23 description?

24 A Well, the minutes say that he did.

25 Q Do you recall giving the board any information

1 about Mr. Hicks' financial involvement with the proposed
2 WRBR transaction?

3 A I remember a discussion regarding Mr. Hicks'
4 obligations with regard to the transaction. Whether I gave
5 an explanation or whether he did, I don't remember.

6 Q What is it that you recall?

7 A I remember the question was asked and then a
8 response was given with regard to the obligations in the
9 documents, or proposed obligations.

10 Q And do you remember what explanation was given to
11 the board?

12 A A description of what the -- what was required
13 under the agreements?

14 Q And what description was that?

15 A Well, I think the guarantee, the letter of credit.

16 Q Did the guarantee cause any concern among board
17 members?

18 A I don't recall that it did.

19 Q Did the letter of credit cause any concern among
20 the board members?

21 A I don't recall that it did.

22 Q Do you recall anything being said at that meeting
23 about Mr. Dille coming to the aid of Mr. Hicks in the even
24 Mr. Hicks was required to come up with money?

25 A No, I do not.

1 Q Not even a tongue-in-cheek reference, or humorous
2 remark?

3 A I don't recall that.

4 Q Do you recall there being any conversations or
5 discussion at the board meeting in terms of what Mr. Hicks
6 was going to get out of this deal?

7 A There may have been that discussion, yes.

8 Q And what do you recall being discussed about that?

9 A My memory is that the question was asked and the
10 statement was made that the terms of conditions of what Mr.
11 Hicks was going to get out or any of his rights had not been
12 agreed upon yet.

13 Q Not been agreed upon or not reduced to writing?

14 A Not agreed upon.

15 Q Did the figure \$50,000 come up?

16 A I don't -- I don't recall.

17 Q You don't recall an exchange between Mr. Hicks and
18 the senior Mr. Sackley about the money that Dave was going
19 to get out of the deal in the event he had to sell his
20 membership interest and whether that sum was adequate?

21 A I recall Mr. Sackley, Sr. cautioning Dave that he
22 be clearly adequately compensated for what he was doing.

23 Q And what was that? Did a figure come up?

24 A I don't recall a figure.

25 Q Was there an agenda for this board meeting?

1 A Yes, I believe there was.

2 Q Was the subject of Hicks' private transaction
3 mentioned in the agenda?

4 A I don't remember. I think it was.

5 Q Looking at the board minutes, do you remember
6 anything in the agenda that was not reflected -- that is not
7 reflected in the board minutes?

8 A I don't have the agenda, so I don't know. My
9 memory is it's a different kind of an agenda and not one
10 with all of the narrative on it.

11 Q Mr. Brown, could you turn to, I believe it's
12 Pathfinder 66? And the page that I'd like you to direct
13 your attention to is page 5.

14 A Is that the page with Hicks 000597 on the bottom?

15 Q Yes, it is.

16 Q And the part that I'd like you to direct your
17 attention to is Section 7.4(b).

18 Now, if I remember from your direct testimony,
19 this provision was inserted by Barnes & Thornburg and then
20 sent to you for review?

21 A Yes.

22 Q If you look down at the last sentence of paragraph
23 (b), you see the figure of \$50,000?

24 A Yes.

25 Q Where did that come from?

1 A It appeared in the document.

2 Q Had there been any prior discussion as to what
3 price should be paid to Mr. Hicks for his shares?

4 A There had been some proposals. That's the first
5 time I had ever seen anything.

6 Q What proposals had there been?

7 A Well, I think I said that we talked about some
8 suggestions at my request all exits, but this is the first
9 time I had ever seen anything in an agreement.

10 Q Well, did the \$50,000 figure come as a shock to
11 you or a surprise, or was that a figure that you had
12 previously discussed with someone?

13 A The -- well, I didn't know about the 50,000 until
14 I had seen it in this agreement as far as a concrete
15 proposal that the Dille children were making.

16 So was I surprised? I was, frankly, delighted to
17 finally get a proposal.

18 Q Did you have an understand before this document
19 arrived that the Dille children were going to have an option
20 to acquire Mr. Hicks' shares if that became possible?

21 A Well, yes. I mean, an understanding. The desire
22 had been expressed to me, yes.

23 Q Well, when had that desire been expressed to you?

24 A Oh, right from the beginning.

25 Q Was that a desire that you and Mr. Hicks concurred

1 with?

2 A Well, I can't speak for Mr. Hicks. I was looking
3 for -- I wanted to see the deal. I wanted to see what the
4 terms and conditions of the agreement, of the whole thing.

5 Q Tell me if I'm wrong on this. A desire had been
6 expressed to you on behalf of the Dille children that they
7 have an option to acquire Mr. Hicks' shares at some point in
8 the future --

9 A Yes.

10 Q -- of his membership interests?

11 A Yes.

12 Q And that was always acceptable to you, was it not?

13 A Well, acceptable to me?

14 Q On behalf of Mr. Hicks.

15 A The -- what I was looking for, this is just half
16 the equation. I wanted to see what Mr. Hicks' rights, this
17 is just an option.

18 Q Was there any request on your part on behalf of
19 Mr. Hicks for him to have a call provision to buy out the
20 shares of the Dille children?

21 A No.

22 Q And why was that?

23 A Well, I believe I testified that this came up at
24 the very last moment, and I think we had to put together the
25 proposal literally in 24 hours for David Hick' put right.

1 JUDGE CHACHKIN: That's not responsive to
2 counsel's questions.

3 THE WITNESS: What was the question?

4 JUDGE CHACHKIN: The provision for the call
5 provision allowing the Dille children to buy out Mr. Hicks,
6 as I understand it, appeared at the second draft in
7 November, wasn't it?

8 THE WITNESS: No.

9 MR. SHOOK: Your Honor, it is in March.

10 JUDGE CHACHKIN: March?

11 MR. SHOOK: Yes, sir. March of '94.

12 JUDGE CHACHKIN: The second draft or the first?

13 MR. SHOOK: Of the operating agreement.

14 JUDGE CHACHKIN: All right.

15 BY MR. SHOOK:

16 Q But my question, which I don't think you answered,
17 was why wasn't there a call provision for Mr. Hicks to
18 acquire the shares of the Dille children?

19 A Well, like any negotiation, this was the first
20 time that the Dille children had made a proposal to Mr.
21 Hicks, and the first time I had seen it, and I can't tell
22 you why there wasn't a call provision other than the fact
23 that I don't think they would propose it.

24 JUDGE CHACHKIN: And you didn't propose it?

25 THE WITNESS: No, I hadn't proposed anything up to

1 this time.

2 JUDGE CHACHKIN: And the question is why didn't
3 you propose a call provision similar to the one in the
4 agreement where Mr. Hicks could have bought out the Dille
5 children?

6 THE WITNESS: Because my main focus was the exit
7 rights for David Hicks, how could he get out of this
8 investment if he wanted to.

9 BY MR. SHOOK:

10 Q Well, this poses a puzzle for me, and let me
11 explain to you why.

12 As this deal appears, Mr. Hicks is going to hold a
13 majority interest in this venture, and I believe you've
14 testified that Mr. Hicks was going to be responsible as a
15 licensee for several employees and be responsible for the
16 programming; correct?

17 A That's right.

18 Q In order to do that Mr. Hicks was also going to
19 have to spend a certain amount of personal time to assure
20 that the station was operating in accordance with FCC rules;
21 correct?

22 A Correct.

23 Q So it would be consistent with your understanding,
24 wouldn't it, that the success or failure of this station was
25 going to be due in large part to Mr. Hicks' efforts?

1 A Yes.

2 Q What I don't understand and what I'd like you to
3 help me with is if this station become successful why is it
4 that Mr. Hicks would not want to have the option to have
5 this station for himself rather than to have to give it up?

6 A Well, if it become successful, for one thing there
7 is a cash flow adjuster on the price, so he gets more money.

8 What was your question?

9 JUDGE CHACHKIN: Do you want to repeated by the
10 reporter?

11 MR. SHOOK: Okay.

12 JUDGE CHACHKIN: Can the reporter repeat the
13 question?

14 MR. SHOOK: Please.

15 JUDGE CHACHKIN: Can the reporter repeat the
16 question back?

17 THE COURT REPORTER: Do you want me to run it
18 back?

19 JUDGE CHACHKIN: Do you want him to run it back or
20 do you want to --

21 MR. SHOOK: No.

22 JUDGE CHACHKIN: I guess you could ask the
23 question.

24 BY MR. SHOOK:

25 Q My question basically is this: If Mr. Hicks is

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1 responsible for the ultimate success of this station and
2 this station in fact become successful, the way this deal is
3 structure appears that Mr. Hicks is not going to be able to
4 fully enjoy the fruits of that success because he's going to
5 have to sell out, he can be required to sell out to the
6 Dille children.

7 A Right, but he's paid at a formula, so he's going
8 to be paid a value for that.

9 Q Well --

10 A Which --

11 Q -- that formula --

12 A -- goes up as the station becomes more valuable.

13 Q It goes up in the sense of it's a multiple of
14 what?

15 A It's a multiple of a cash flow. So he does
16 benefit from the station becoming more valuable and
17 profitable.

18 Q But he can't benefit to the point where he can buy
19 out the Dille children apparently.

20 A No. I don't know if he's necessarily benefitting
21 by buying out the Dille children. This is just his way to
22 get out, but he is benefitting by the success of the
23 station.

24 JUDGE CHACHKIN: So what you're telling the
25 parties that this deal was structured at the outset so that

1 at some point Mr. Hicks would have to get out?

2 THE WITNESS: Right, at the outset that the entity
3 was formed, which was late in March.

4 JUDGE CHACHKIN: That's right. But it was
5 structure at the outset so that Mr. Hicks would have to get
6 out and it was intended from the outset that Mr. Hicks at
7 some point would leave, and would no longer operate the
8 station?

9 THE WITNESS: Well, Your Honor.

10 JUDGE CHACHKIN: Isn't that the case here since --

11 THE WITNESS: No, he didn't have to get out. He
12 only had to get out if they wanted to buy him out.

13 JUDGE CHACHKIN: That's right.

14 THE WITNESS: It's an option.

15 JUDGE CHACHKIN: But there is nothing there in the
16 provision of permitting him to remain in assuming the Dille
17 children wanted him out?

18 THE WITNESS: That's correct.

19 JUDGE CHACHKIN: And this was from the beginning
20 understood that this is the way the deal would be
21 structured, or at least from the time that the operating
22 agreement was --

23 THE WITNESS: Yes. From the time the operating
24 agreement was signed. We didn't have any deal until that
25 time.

1 BY MR. SHOOK:

2 Q Now, there was some testimony about the formula.
3 Do you know how that formula was derived?

4 A I don't.

5 Q Do you know whether or not the formula that was
6 derived was in fact a good deal for Mr. Hicks?

7 A Well, it looks like five times cash flow. I'm a
8 lawyer, not an investment banker.

9 Q Well, do you know how that provision compared with
10 other agreements of this type?

11 A In 1994, no, I'm not qualified to say what would
12 be a proper formula.

13 Q Was there a similar formula for Mr. Hicks in the
14 even he was to get out of the Crystal situation?

15 A No, that was a totally different kind of an
16 arrangement.

17 Q What kind of arrangement was that?

18 A Well, that was a -- well, it's been called by
19 different names; shotgun clause or -- but it's a totally --
20 there is no formula. So the one party gives a value and the
21 other party either buys or sells.

22 Q So, in other words, the price was going to be
23 determined roughly in accordance with fair market value at
24 the time the demand is made to have the shares purchased?

25 A Well, the idea of those clauses is one isn't going

1 to put on the table a price that one isn't willing to either
2 buy or sell, but it hasn't anything to do with a formula.

3 Q Do you know whether or not you or Mr. Hicks made a
4 similar proposal to the Dille children?

5 A Well, I know I never made such a proposal. A
6 shotgun is a rather unusual clause.

7 Q Why is that?

8 A Why is it unusual?

9 Q Yes, sir.

10 A I don't see it very often.

11 Q But if I understood you right, the ultimate effect
12 of such a proposal would be to roughly ensure that the price
13 offered would be close to fair market value?

14 MR. WERNER: Objection, Your Honor. That
15 misstates the witness's testimony. The witness has stated
16 the purpose of the shotgun clause is to ensure that the
17 person making the offer is making an offer that he is
18 prepared to pay, not that it has anything to do with fair
19 market value.

20 JUDGE CHACHKIN: Well, this is cross-examination.
21 Overruled.

22 THE WITNESS: Can you state the question for me
23 again?

24 MR. SHOOK: Yes, could you play it back please?

25 (According, the question was played back by

1 the court reporter.)

2 JUDGE CHACHKIN: All right.

3 THE WITNESS: Okay. The concept of a shotgun

4 clause is that a person who first makes a proposal, a
5 number, will put on the table a number that he's either
6 willing to buy or sell so that it will be a fair number.
7 Whether or not it's fair market value, I don't know.

8 JUDGE CHACHKIN: Why isn't the provision here
9 based on fair market value if you're protecting the
10 interests of Mr. Hicks?

11 THE WITNESS: Well, this cash flow may well be a
12 measure of fair market value; probably is.

13 JUDGE CHACHKIN: How do you know unless you
14 testing it against fair market value?

15 THE WITNESS: Well, I'd have to see some numbers
16 in order to understand it. It could well be; it probably
17 is.

18 JUDGE CHACHKIN: Isn't the usual provision based
19 on whatever the fair market value is at that time?

20 THE WITNESS: Oh, Your Honor, there is every kind
21 of provision. This is a provision that provides for a
22 measure of value by cash flow, and that's quite -- that's
23 quite common.

24 JUDGE CHACHKIN: And you think five times cash
25 flow is common in the broadcast industry?

1 THE WITNESS: Well, this is 1994.

2 JUDGE CHACHKIN: Yeah.

3 THE WITNESS: We've had --

4 JUDGE CHACHKIN: In '94, do you think that's
5 common --

6 THE WITNESS: Number one, I don't know whether I
7 can testify to that, but I can say this is '94. This is a
8 very small station, and I -- that might well be.

9 JUDGE CHACHKIN: Well, did you --

10 THE WITNESS: No. Do I know it to be? No.

11 JUDGE CHACHKIN: Well, did you consult with anyone
12 to see whether this is a reasonable price?

13 THE WITNESS: Well, I consulted with Dave Hicks.

14 JUDGE CHACHKIN: I understand that. Did you
15 consult with any outside experts since you said you don't
16 have any experience? I assume there are appraiser around.
17 Did you consult with appraisers or anyone familiar with what
18 broadcast stations were selling at in 1994 before agreeing
19 to this provision for Mr. Hicks?

20 THE WITNESS: Well, first, let me make it clear
21 Mr. Hicks agreed to the provision. I didn't agree to the
22 provision. And this is a business term which he is much
23 better and able to evaluate than I am.

24 BY MR. SHOOK:

25 Q Now, looking at Pathfinder Exhibit 66, the page

1 we've been looking at, do I recall correctly that it was
2 either you or a member of your firm that had made the cross-
3 outs that are reflected on 7.4(b)?

4 A Yes. Yes, it was a member of my firm.

5 Q And that was Mr. Stankewicz?

6 A Yes.

7 Q Did you and he discuss why it was that he was
8 crossing out what he did?

9 A I'm certain that we did, yes.

10 Q Do you recall what that discussion was?

11 A I do not.

12 Q Now, we had noted previously that the minimum
13 purchase price with respect to the call provision initially
14 proposed was \$50,000, and later documents I've seen reflect
15 that the final price agreed upon for a minimum was \$100,000.

16 Do you know how the change came about?

17 A Yes.

18 Q And how did it come about?

19 A Mr. Hicks told me that the 50,000 in the call
20 provision should be changed to 100. I marked it up and sent
21 it to Barnes & Thornburg.

22 Q Did he explain to you why it should be changed to
23 100?

24 A Well, I notice it was changed in paragraph (c),
25 and he may have told me he had a discussion with somebody

1 about that. I don't know, but he told me that it should be
2 100.

3 Q Did you have any discussions with anybody at
4 Barnes & Thornburg as to whether the figure should be
5 changed from 50 to 100?

6 A No, I did not.

7 Q Did anybody get back to you on behalf of the Dille
8 children commenting about the change in the figure from
9 50,000 to 100,000 dollars?

10 A Well, Barnes & Thornburg accepted the revision.

11 Q No, I understand that. But my question is did
12 anybody on behalf of the Dille children, either Barnes &
13 Thornburg, Mr. Watson, anybody get back to you and comments
14 about the change from \$500,000 to \$100,000 as the minimum
15 price?

16 A Well, and I think I told you Barnes & Thornburg
17 accepted it, so they got back to me and said okay.

18 Q Accepted it from the standpoint of not commenting
19 on it or accepting it from the standpoint of calling you up
20 and saying, "Oh, by the way, we notice that there was a
21 change here of 50 to 100. We're okay with that."?

22 A I don't know whether we specifically spoke on the
23 telephone about that change or whether we sent them the
24 changed paragraph and they just said okay.

25 Q I'd like to now direct your attention to Mass

1 Media Exhibit 36. The memo that's reflected in Mass Media
2 Exhibit 36, is that referenced on page 4 of Mass Media
3 Exhibit 18?

4 A Yes.

5 Q So, in other words, on or about December 8 there
6 was a conference between yourself and Mr. Hicks?

7 A I think it was a telephone call. I think it was a
8 telephone call that I made to Mr. Hicks.

9 Q That you made to Mr. Hicks?

10 A Yes.

11 Q And what prompted your call to Mr. Hicks?

12 A Well, we -- I continued to be concerned that the
13 deal had changed. There was a guarantee and now a letter of
14 credit which extended for a year into the deal that Mr.
15 Hicks had put up. So I called Mr. Hicks, and again
16 expressed my concern.

17 Q And he told you what?

18 A He told me not to worry about it; that Mr. Dille
19 would take care of it.

20 Q That was the import of what he said or that was
21 what he said?

22 A No, I think those were about his words.

23 Q And you understood that to mean what you then
24 wrote in the first sentence of Exhibit 36?

25 A Yes, but I'm certain those are not Mr. Hicks'

1 words. Those are my words.

2 Q Now, moving to the second paragraph of that
3 exhibit, did you have a conversation with Mr. Dille on or
4 about December 8th?

5 A I don't believe so.

6 Q Can you explain to me then why it is written, "We
7 were also instructed by our clients, David L. Hicks and John
8 F. Dille," et cetera?

9 A No, but I don't believe I had a conference with
10 Mr. Dille.

11 Q Was Mr. Dille a client of yours?

12 A No.

13 Q He was never a client of yours?

14 A No.

15 Q Are these your words?

16 A Those are my words.

17 Q Were you instructed by Mr. Hicks to -- were you
18 instructed by Mr. Hicks that the other list of issues which
19 remained open were not of such important that we should
20 continue to pursue them with the seller's attorney, Kimberly
21 Houdulin?

22 A Yes, it -- this may have been a memorializing a
23 conversation that I had with Dave Hicks right prior to the,
24 or at the signing of the documents. This memorandum is for
25 me, not -- you know, so that I know what I had been told.

1 There were a number of issues in the -- as you saw -- in the
2 documents which we ultimately agreed to.

3 Q Were you told anything by John Dille regarding the
4 matters that are reflected in the second paragraph?

5 A I don't believe so.

6 Q Is the reference then to John Dille a mistake?

7 A Oh, I don't know that it's a mistake.

8 Q Would there have been any reason for you to write
9 this the way you did if you had not been instructed by John
10 Dille?

11 A Sure. Mr. Hicks could have told me that it was
12 okay with Mr. Dille.

13 Q And that was a thought that you captured in the
14 first paragraph of this memo, correct? Mr. Hicks told you
15 something that Mr. Dille told him?

16 A Yes.

17 Q But you didn't write it that way in the second
18 paragraph, did you?

19 A No. And the reason I write these is sometimes
20 clients come back and say to you know, "Why, why did we
21 agree to this? Why didn't we continue to pursue this
22 point?" I like to have something that tells me that they
23 signed off.

24 Q Did you ever happen to show this memo to Mr.
25 Hicks?

1 A No.

2 Q Did you ever discuss this memo with Mr. Hicks?

3 A No.

4 MR. SHOOK: Your Honor, the Bureau offers Exhibit
5 36, Mass Media Exhibit 36.

6 JUDGE CHACHKIN: Any objection?

7 MR. WERNER: No objection.

8 JUDGE CHACHKIN: The exhibit is received.

9 (The document referred to,
10 having been previously marked
11 for identification as MMB
12 Exhibit No. 36, and was
13 received into evidence.)

14 BY MR. SHOOK:

15 Q Mr. Brown, please turn to Mass Media Exhibit 27.
16 Do you have before you a letter dated November 3, 1993?

17 A Yes.

18 Q Are you the author of this letter?

19 A Yes.

20 Q Would it be consistent with your recollection that
21 you sent it to the addresses as noted, Mr. Hicks and Mr.
22 Dille?

23 A Yes.

24 MR. SHOOK: Your Honor, the Bureau offers Exhibit
25 27.

1 JUDGE CHACHKIN: Any objection?

2 MR. JOHNSON: One second, Your Honor.

3 No objection.

4 JUDGE CHACHKIN: All right, that was what?

5 MR. SHOOK: That was 27, Mass Media Exhibit 27.

6 JUDGE CHACHKIN: The exhibit is received.

7 (The document referred to,
8 having been previously marked
9 for identification as MMB
10 Exhibit No. 27, and was
11 received into evidence.)

12 JUDGE CHACHKIN: Why, Mr. Brown, are you sending
13 documents to Mr. Dille? You didn't represent him.

14 THE WITNESS: No, but his children are 49 percent
15 owners of the entity that's going to be some day created,
16 and I presume he's commenting on behalf of his children.

17 JUDGE CHACHKIN: Well, I understood that the Dille
18 children were represented by a law firm, were they not?

19 THE WITNESS: Not at that time.

20 JUDGE CHACHKIN: When did they first become
21 represented by a law firm?

22 THE WITNESS: February or March of 1994.

23 JUDGE CHACHKIN: Prior to that time you dealt with
24 Mr. Dille or Mr. Watson in connection with the Dille
25 children?

1 A Yes.

2 BY MR. SHOOK:

3 Q Mr. Brown, could you please turn to Mass Media
4 Exhibit 28? If you could, please, just take a moment to
5 look through the document.

6 (Witness reviews document.)

7 BY MR. SHOOK:

8 Q Did you or members of your firm have anything to
9 do with the deletions and additions that are reflected in
10 the draft?

11 A Yes.

12 Q What role is that?

13 A Well, we had made comments to the first or
14 second -- I don't know which one we're in here -- draft, and
15 the underlining portions of this document are those that are
16 accepted and the agreement has been changed.

17 Q Could you please turn to page 17 of the agreement?
18 I want to direct your attention to the notices paragraph,
19 Section 14.2.

20 A Yes.

21 Q How did it come about that a notice that was to be
22 sent to the attention of Mr. Hicks was going to go to a post
23 office box in Elkhart?

24 A Well, I presume this was the mailing address of
25 the business that would become to be known as Hicks

1 Broadcasting of Indiana.

2 Q Do you know who opened the post office box?

3 A I don't.

4 Q Do you know whether that post office box has any
5 connection with Pathfinder?

6 A I don't.

7 MR. SHOOK: Your Honor, the Bureau offers Exhibit
8 28, Mass Media Exhibit 28.

9 JUDGE CHACHKIN: Any objection?

10 MR. WERNER: No, Your Honor.

11 MR. JOHNSON: No, Your Honor.

12 JUDGE CHACHKIN: The exhibit is received?

13 (The document referred to,
14 having been previously marked
15 for identification as MMB
16 Exhibit No. 28, was received
17 into evidence.)

18 BY MR. SHOOK:

19 Q Mr. Brown, could you please turn to Mass Media
20 Exhibit 29?

21 Do you have before you a letter dated November 5,
22 1993?

23 A Yes.

24 Q Are you the author of that letter?

25 A Yes.

1 Q And would it be consistent with your recollection
2 that you sent this letter to both Mr. Hicks and Mr. Dille?

3 A Yes.

4 MR. SHOOK: Your Honor, the Bureau offers Mass
5 Media Exhibit No. 29.

6 JUDGE CHACHKIN: Any objections?

7 MR. WERNER: No objection.

8 JUDGE CHACHKIN: The document is received.

9 (The document referred to,
10 having been previously marked
11 for identification as MMB
12 Exhibit No. 29, was received
13 into evidence.)

14 BY MR. SHOOK:

15 Q Mr. Brown, could you please turn to Mass Media
16 Exhibit 31?

17 Do you have before you a letter dated November 8,
18 1993?

19 A Yes.

20 Q Are you the author of that letter?

21 A Yes.

22 Q Would it be consistent with your recollection if
23 you sent a copy of this letter to Mr. Hicks and to Mr.
24 Dille?

25 A Yes.

1 MR. SHOOK: Your Honor, the Bureau offers Mass
2 Media Exhibit 31?

3 JUDGE CHACHKIN: Any objection?

4 MR. WERNER: No, Your Honor.

5 JUDGE CHACHKIN: The exhibit is received.

6 (The document referred to,
7 having been previously marked
8 for identification as MMB
9 Exhibit No. 31, was received
10 into evidence.)

11 BY MR. SHOOK:

12 Q Mr. Brown, could you please turn to Mass Media
13 Exhibit No. 33?

14 Do you recognize this document?

15 A Yes.

16 Q Can you give us a brief description as to what it
17 is?

18 A It's a fax sheet transmittal from Dave Hicks to
19 me.

20 Q Are you being informed herein that the Washington
21 attorney for Hicks Broadcasting is going to be Alan
22 Campbell?

23 A Yes.

24 Q Did you know that -- did you know that fact before
25 this fax or is this the first time this is coming to your